



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-72,702-05

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**EX PARTE MELISSA ELIZABETH LUCIO, Applicant**

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**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS  
AND MOTION FOR STAY OF EXECUTION  
FROM CAUSE NO. 07-CR-00885 IN THE 138<sup>TH</sup> JUDICIAL DISTRICT COURT  
CAMERON COUNTY**

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*Per curiam.*

### **ORDER**

We have before us a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5, and a motion to stay Applicant's execution.<sup>1</sup>

In July 2008, a jury convicted Applicant of the February 2007 capital murder of her two-year-old daughter. *See* TEX. PENAL CODE § 19.03(a). Based on the jury's

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<sup>1</sup> All references to "Articles" in this order refer to the Texas Code of Criminal Procedure unless otherwise specified.

answers to the special issues submitted pursuant to Article 37.071, the trial court sentenced Applicant to death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Lucio v. State*, 351 S.W.3d 878 (Tex. Crim. App. 2011). We also denied relief on Applicant's initial post-conviction writ of habeas corpus application. *Ex parte Lucio*, No. WR-72,702-02 (Tex. Crim. App. Jan. 9, 2013) (not designated for publication).

The trial court ultimately scheduled Applicant's execution for April 27, 2022. On April 18, 2022, she filed the instant habeas application. She raises nine claims in her application. Specifically, Applicant asserts that: (1) but for the State's use of false testimony, no juror would have convicted her; (2) previously unavailable scientific evidence would preclude her conviction; (3) she is actually innocent; (4) her trial counsel provided constitutionally ineffective assistance; (5) the State suppressed favorable, material evidence in violation of *Brady v. Maryland*; (6) the State violated her Sixth Amendment right to be free from uncounseled pretrial interrogation; (7) her conviction and death sentence are tainted by juror misconduct; (8) gender bias tainted her prosecution and contributed to her wrongful conviction; and (9) she is innocent of the death penalty.

After reviewing the record, we have determined that Claims 1, 2, 3, and 5 meet the requirements of Article 11.071 § 5(a). We therefore remand those claims to the trial court for a merits' review. The remaining claims do not meet the requirements of Article

11.071 § 5(a) and should not be reviewed. Applicant's execution is stayed pending resolution of the remanded claims.

IT IS SO ORDERED THIS THE 25<sup>th</sup> DAY OF APRIL, 2022.

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